

1 BILL NO. S-81-09-19

2 SPECIAL ORDINANCE NO. S-219-81

3
4 AN ORDINANCE approving contracts between
5 the City of Fort Wayne, Indiana and T & F
6 Construction Corporation and the City of
7 Fort Wayne, Indiana and Brooks Construction
8 Co., Inc. for electrical, landscaping and
9 general contracting.

10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
11 FORT WAYNE, INDIANA:

12 SECTION 1. That certain contracts dated September 14,
13 1981 and September 17, 1981, respectively, between the City of
14 Fort Wayne, Indiana and Brooks Construction Co., Inc. and
15 between the City of Fort Wayne, Indiana and T & F Construction
16 Corporation, for:

17 Broadway Streetscape project: Division I,
18 General Contractor, Brooks Construction,
19 street, curb, sidewalk, drainage, screen
20 walls, and paving construction; Division II,
21 Landscaping Contractor, T & F Construction,
22 tree and shrub planting, sodding, and main-
23 tenance; Division III, Electrical Contractor,
24 T & F Construction, traffic signal bases,
25 and underground conduit.

26 at a total cost of \$305,895.03, all as more particularly set
27 forth in said contracts which are on file in the Office of
28 Community Development and Planning and are by reference incor-
29 porated herein and made a part hereof, be and the same are in
30 all things hereby ratified, confirmed and approved.

31 SECTION 2. That this Ordinance shall be in full force
32 and effect from and after its passage and approval by the Mayor.


COUNCILMAN

33 APPROVED AS TO FORM AND
34 LEGALITY SEPTEMBER 18, 1981.


35 BRUCE O. BOXBERGER, CITY ATTORNEY

Read the first time in full and on motion by V. Schmidt, seconded by Disjuncta, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: 9-22-81

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by V. Schmidt, seconded by Law, and duly adopted, placed on its passage. PASSED (~~Lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	<u>9</u>	<u>0</u>	_____	_____	_____
BURNS	<u>✓</u>	_____	_____	_____	_____
EISBART	<u>✓</u>	_____	_____	_____	_____
GIAQUINTA	<u>✓</u>	_____	_____	_____	_____
NUCKOLS	<u>✓</u>	_____	_____	_____	_____
SCHMIDT, D.	<u>✓</u>	_____	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____	_____
SCHOMBURG	<u>✓</u>	_____	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____	_____

DATE: 10-13-81

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. A-219-81 on the 13th day of October, 1981.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of October, 1981, at the hour of 11:30 o'clock P. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 15th day of Oct. 1981, at the hour of 10 o'clock A. M., E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-81-09-19

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON Finance TO WHOM WAS REFERRED AN
ORDINANCE approving contracts between the City of Fort Wayne, Indiana
and T & F Construction Corporation and the City of Fort Wayne, Indiana
and Brooks Construction Co., Inc. for electrical, landscaping and general
contracting

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

VIVIAN G. SCHMIDT, CHAIRMAN

Vivian G. Schmidt

JAMES S. STIER, VICE CHAIRMAN

James S. Stier

MARK E. GIAQUINTA

Mark E. Giaquinta

PAUL M. BURNS

Paul M. Burns

ROY J. SCHOMBURG

Roy J. Schomburg

10-13-81
CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK



The City of Fort Wayne

September 14, 1981

The Common Council
Fort Wayne, Indiana

SUBJECT: CONSTRUCTION CONTRACTS FOR THE BROADWAY STREETScape PROJECT
AND PUBLIC PARKING LOT AT THE CORNER OF WILT AND VAN BUREN.

Councillors:

The Department of Community Development and Planning respectfully requests "Prior Approval" in order that a landscape construction contract for the Broadway Streetscape Project and Public Parking Lot be awarded on September 16 by the Board of Public Works. At the September 9 Board of Works meeting, T & F Construction was selected as the Landscape Contractor for Division II in the amount of \$18,948.

The streetscape and parking lot landscape will be completed within a ninety day construction period beginning September 16, 1981.

Special Ordinance for formal approval will be submitted in the very near future.

Yours truly,

COMMUNITY DEVELOPMENT AND PLANNING

Abraham K. Farkas

Dr. Abraham K. Farkas, Director

CITY OF FORT WAYNE

Win Moses, Jr.

Win Moses, Jr., Mayor

AKF/nn

Approved:

Vivian L. Schmidt

John Guckler

Samuel J. Talarico

Attest: Charles W. Westerman

Charles Westerman, City Clerk

James W. Hester
Ray J. Schaefer
John J. Schaefer

Paul F. Schaefer
Mark C. Gierke



The City of Fort Wayne

September 4, 1981

The Common Council
Fort Wayne, Indiana

SUBJECT: CONSTRUCTION CONTRACTS FOR THE BROADWAY STREETSCAPE PROJECT
AND PUBLIC PARKING LOT AT THE CORNER OF WILT AND VAN BUREN.

Councillors:

The Department of Community Development and Planning respectfully requests "Prior Approval" in order that General Contractor and Electrical Contractor construction contracts for the Broadway Streetscape Project and Public Parking Lot be awarded on September 14 by the Board of Public Works. At the September 2 Board of Works meeting, Brooks Construction Co., Inc., was selected as the General Contractor for the bid amount of \$278,237.03 and T & F Construction Corporation was selected as the Electrical Contractor for the bid amount of \$8,710.00.

The streetscape and parking lot construction will be completed within a ninety day construction period beginning September 14, 1981. The resurfacing of the street and lot and the necessary traffic and parking striping will be delayed until early spring.

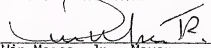
Special Ordinance for formal approval will be submitted in the very near future.

Yours truly,

COMMUNITY DEVELOPMENT AND PLANNING

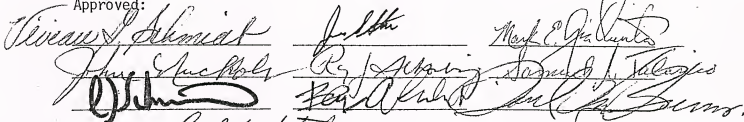

Dr. Abraham K. Farkas, Director

CITY OF FORT WAYNE


Win Moses, Jr., Mayor

AKF/nn

Approved:



Attest: 
Charles Westerman, City Clerk

THIS AGREEMENT is dated as of the seventeenth day of September 1981 by and between the City of Fort Wayne, Indiana, acting by and through its

Board of Public Works
Corporation

(hereinafter called OWNER) and T & F Construction
(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Division II, Sect. 1, Streetscape Landscaping-Base Bid w/ sodding & maintenance
Division II, Sect. 2, Parking Lot Landscaping-Base Bid w/ sodding & maintenance
These divisions consist of tree & shrub planting and sodding & maintenance add alternate
Division III, Traffic Signal Bases and Conduit Improvements - This division
consists of installing traffic signal bases and underground conduit.
The Project for which the Work under the Contract Documents may be the whole or only a
part is generally described as follows: Broadway Streetscape Project, HUD Project No.
B-81-MC-18-0003

Article 2. ENGINEER.

The Project has been designed by Bonar & Associates, Inc. (Street & Sidewalk Divisions) and
Community Planning & Development Dept. (Landscaping Division)

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority
assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract
Documents.

Article 3. CONTRACT TIME.

3.1. The Work will be substantially completed within 80 days after the date when the Contract Time commences
to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with
paragraph 14.13 of the General Conditions within 90 days after the date when the Contract Time commences to run.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and
that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1
above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the
delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if
the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR
agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay
OWNER Fifty dollars (\$ 50.00) for each day that expires after
the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents an amount in
current funds equal to the Cost of the Work plus a Contractor's Fee for overhead and profit, both of which shall be determined as
provided below.

Article 5. COST OF WORK.

Cost of the Work shall be determined as provided in paragraphs 11.4 and 11.5 of the General Conditions, but, in addition to
any limitations therein set forth, it shall not include costs in excess of any Guaranteed Maximum Contract Price as set forth in Article
6 hereof and adjusted pursuant to Article 7 hereof. Whenever any portion of the Work is to be performed for CONTRACTOR
by Subcontractors, CONTRACTOR shall have identified in writing, given to OWNER prior to the Notice of Award, those portions
of the Work that he proposes to subcontract, and after the Notice of Award may only subcontract other portions of the Work with
OWNER's written consent.

The Contractor's Fee shall be determined as follows:

6.1. A fixed fee of dollars (\$) which shall be subject to increases or decreases for changes in the Work as provided in paragraph 8.1 below.

6.1. A fee based on the following percentages of the various portions of the Cost of the Work:

Payroll costs (see paragraph 11.4.1 of General Conditions) %,

Material and equipment costs (see paragraph 11.4.2 of General Conditions) %,

Amounts paid to Subcontractors (see paragraph 11.4.3 of General Conditions) %,

Amounts paid to special consultants (see paragraph 11.4.4 of General Conditions) %, and

Supplemental costs (see paragraph 11.4.5 of General Conditions) %.

No fee shall be payable on the basis of costs itemized in paragraph 11.5 of the General Conditions.

CONTRACTOR guarantees that the maximum amount payable by OWNER in accordance with this paragraph 6.1 as a percentage fee will not exceed dollars (\$) subject to increases or decreases for changes in the Work as provided in paragraph 8.3 below.

Article 7. GUARANTEED MAXIMUM CONTRACT PRICE.

CONTRACTOR guarantees that the maximum cost to OWNER of the Cost of the Work and the Contractor's Fee will not exceed dollars (\$ 27,658.00) subject to increases or decreases for changes in the Work.

Article 8. CHANGES IN THE WORK.

The amount of any increases or decreases in the Contractor's Fee and in any Guaranteed Maximum Contract Price or Fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

8.1. If the Contractor's Fee is a fixed fee: in the case of the net additions or revisions in the Work, any increase in the Contractor's Fee shall be determined in accordance with paragraph 11.6.2 of the General Conditions; and in the case of net decreases in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any decrease in the Contractor's Fee shall be on the basis of one-half of the amount provided for in said paragraph 11.6.2 for net additions in the Work.

8.2. If the Contractor's Fee is a percentage fee not subject to any guaranteed maximum limitation: Contractor's Fee will adjust automatically as the Cost of the Work changes.

8.3. Wherever there is a Guaranteed Maximum Contract Price or Fee: in the case of net additions or revisions in the Work, the amount of any increase in the Guaranteed Maximum shall be determined in accordance with paragraphs 11.3 through 11.6, inclusive, of the General Conditions; and in the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any Guaranteed Maximum shall be reduced by mutual agreement.

Article 9. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The Applications for Payment will indicate the amount of the Contractor's Fee then payable. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

9.1. *Progress Payments.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the ~~FIRST~~ day of each month during construction as provided below. All such payments shall be subject to the limitations of any Guaranteed Maximum Contract Price or Fee.

9.1.1. For Cost of Work: Progress payments on account of the Cost of the Work will be made:

9.1.1.1. Prior to Substantial Completion, in an amount equal to:

..... 90 % of the Work completed, and

..... 90 % of material and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

9.1.1.2. Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to % of the Cost of the Work less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

9.1.2. For Contractor's Fee: Progress payments on account of the Contractor's Fee will be made:

9.1.2.1. If the Contractor's Fee is a fixed fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.

~~9.1.2.2. If the Contractor's Fee is a percentage fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.~~

9.2. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 10. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 11. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

11.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

11.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 11.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him for such purposes.

11.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

11.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

11.6.

Article 12. ACCOUNTING RECORDS.

CONTRACTOR shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to OWNER. OWNER shall be afforded access to all CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Cost of the Work and Contractor's Fee. CONTRACTOR shall preserve all such documents for a period of three years after the final payment by OWNER.

Article 13. CONTRACT DOCUMENTS.

The Contract Documents which comprise the agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

13.1. This Agreement (pages 1 to 5..... inclusive).

13.2. ~~Excluded from automatic release (for use by the Government of the State of New York only)~~ N/A

13.3. Performance and other Bonds, identified as Exhibits^A..... and consisting of pages.

13.4. Notice of Award.

13.5. General Conditions, (pages ...GC/1... to ...GC/49, inclusive).

13.6. Supplementary Conditions (pages .SC/1... to ..SC/23, inclusive).

SFA/4

13.7. Specifications bearing the title Specifications, Sections 1 thru 7 inclusive and consisting of 7 sections divisions and 12 pages as listed in the table of contents thereof.

13.8. Drawings, consisting of a cover sheet and sheets numbered 1 through 30, inclusive, with each sheet bearing the following general title:

13.9. Addenda numbers 1 and 2, inclusive.

13.10. Documentation submitted by CONTRACTOR prior to Notice of Award (pages B/1 to B/10, inclusive).

13.11. Any Modifications, including Change Orders, duly delivered after execution of this Agreement.

13.12. All other items, not listed above, included in the CDBG Program, HUD Project No. B-81-MC-18-0003, Contract Documents, dated July, 1981, as prepared by Bonar & Assoc. Inc. There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 14. MISCELLANEOUS

14.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

14.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 15. OTHER PROVISIONS.

STAYO

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on Thursday.....September 17....., 1981.....

OWNER...City of Fort Wayne...Indiana.....
Board of Public Works

CONTRACTOR...T. & F. Construction Corp.....

By.....

By...T.L. Taber.....PRESIDENT

[CORPORATE SEAL]

T.L. TABER
[CORPORATE SEAL]

Attest.....

Attest...Doraine Stone.....

Address for giving notices

Address for giving notices

(If OWNER is a public body attach evidence of
authority to sign and resolution or other
document authorizing execution of Agreement.)

License No.....

Agent for service of process:.....

BOARD OF PUBLIC WORKS

Thomas W. Latchem, Chairman

Roberta Anderson-Staten, Member

Betty R. Collins, Member

ATTEST:

Sandra E. Kennedy, Clerk

"NOTICE TO PROCEED"

To: T & F Construction Corp. Date: September 17, 1981
P.O. Box 27 Project: Broadway Streetscape Project
Hagerstown, Indiana 47346 Resolution: 5922-1981

You are hereby notified to proceed in accordance with your contract dated
September 17, 1981 on the project and you are to complete the project
within 90 consecutive calendar days thereafter.

THEREFORE, the date for the completion of this project is December 15, 1981

OWNER:

BOARD OF PUBLIC WORKS

Thomas Latchem, Chairman

Roberta Anderson Staten, Member

Betty Collins, Member

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO
PROCEED is hereby acknowledged
by T & F CONSTRUCTION CORP.
this the 17th day of September,
1981.

By: J. L. Tabor

Title: PRESIDENT

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Broadway Streetscape Project, HUD Project

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

X X X X This Work will be performed all year round from XXXXXXXXXXXXXXXXXXXXXXXXXX
completed and ready for final payment in accordance with paragraph 1.3.1 of the General Conditions only or before X

Page 1 of5..... pages

(Strike out inapplicable paragraph)

The Contractor's Fee shall be determined as follows:

SFA/2

6.1. A fixed fee of dollars (\$.....) which shall be subject to increases or decreases for changes in the Work as provided in paragraph 8.1 below.

6.1. A fee based on the following percentages of the various portions of the Cost of the Work:

Payroll costs (see paragraph 11.4.1 of General Conditions) %.

Material and equipment costs (see paragraph 11.4.2 of General Conditions) %.

Amounts paid to Subcontractors (see paragraph 11.4.3 of General Conditions) %.

Amounts paid to special consultants (see paragraph 11.4.4 of General Conditions) %.

Supplemental costs (see paragraph 11.4.5 of General Conditions) %.

No fee shall be payable on the basis of costs itemized in paragraph 11.5 of the General Conditions.

CONTRACTOR guarantees that the maximum amount payable by OWNER in accordance with this paragraph 6.1 as a percentage fee will not exceed dollars (\$.....) subject to increases or decreases for changes in the Work as provided in paragraph 8.3 below.

Article 7. GUARANTEED MAXIMUM CONTRACT PRICE.

CONTRACTOR guarantees that the maximum cost to OWNER of the Cost of the Work and the Contractor's Fee will not exceed dollars (\$.....) subject to increases or decreases for changes in the Work.

Article 8. CHANGES IN THE WORK.

The amount of any increases or decreases in the Contractor's Fee and in any Guaranteed Maximum Contract Price or Fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

8.1. If the Contractor's Fee is a fixed fee: in the case of the net additions or revisions in the Work, any increase in the Contractor's Fee shall be determined in accordance with paragraph 11.6.2 of the General Conditions; and in the case of net decreases in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any decrease in the Contractor's Fee shall be on the basis of one-half of the amount provided for in said paragraph 11.6.2 for net additions in the Work.

8.2. If the Contractor's Fee is a percentage fee not subject to any guaranteed maximum limitation: Contractor's Fee will adjust automatically as the Cost of the Work changes.

8.3. Wherever there is a Guaranteed Maximum Contract Price or Fee: in the case of net additions or revisions in the Work, the amount of any increase in the Guaranteed Maximum shall be determined in accordance with paragraphs 11.3 through 11.6, inclusive, of the General Conditions; and in the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any Guaranteed Maximum shall be reduced by mutual agreement.

Article 9. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The Applications for Payment will indicate the amount of the Contractor's Fee then payable. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

9.1. *Progress Payments.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the day of each month during construction as provided below. All such payments shall be subject to the limitations of any Guaranteed Maximum Contract Price or Fee.

9.1.1. For Cost of Work: Progress payments on account of the Cost of the Work will be made:

9.1.1.1. Prior to Substantial Completion, in an amount equal to:

..... 90 % of the Work completed, and

..... 90 % of material and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

9.1.1.2. Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to % of the Cost of the Work less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

9.1.1.3. All such payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

9.1.2. For Contractor's Fee: Progress payments on account of the Contractor's Fee will be made:

9.1.2.1. If the Contractor's Fee is a fixed fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.

9.1.2.2. If the Contractor's Fee is a percentage fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.

9.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 10. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 11. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

11.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

11.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 11.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him for such purposes.

11.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

11.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

11.6.

Article 12. ACCOUNTING RECORDS.

CONTRACTOR shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to OWNER. OWNER shall be afforded access to all CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Cost of the Work and Contractor's Fee. CONTRACTOR shall preserve all such documents for a period of three years after the final payment by OWNER.

Article 13. CONTRACT DOCUMENTS.

The Contract Documents which comprise the agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 13.1. This Agreement (pages 1 to 5....., inclusive).
- 13.2. ~~Drawings and Specifications~~ page 1 to 5, inclusive, N/A
- 13.3. Performance and other Bonds, identified as Exhibits A..... and consisting of pages.
- 13.4. Notice of Award.

13.5. General Conditions, (pages GC/1 to GC/49, inclusive).

SFA/4

13.6. Supplementary Conditions (pages SC/1 to SC/23, inclusive).

13.7. Specifications bearing the title Specifications, Sections 1 thru 7 inclusive and consisting of 7 sections divisions and 12 pages as listed in the table of contents thereof.

13.8. Drawings, consisting of a cover sheet and sheets numbered 1 through 30, inclusive, with each sheet bearing the following general title:

13.9. Addenda numbers 1 and 2, inclusive.

13.10. Documentation submitted by CONTRACTOR prior to Notice of Award (pages B/1 to B/10, inclusive).

13.11. Any Modifications, including Change Orders, duly delivered after execution of this Agreement.

13.12. All other items, not listed above, included in the CDBG Program, HUD Project No. B-81-MC-18-0003, Contract Documents, dated July, 1981, as prepared by Bonar & Assoc. Inc. There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 14. MISCELLANEOUS

14.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

14.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 15. OTHER PROVISIONS.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on Monday, September 14, 19 81

OWNER City of Fort Wayne, Indiana
Board of Public Works

CONTRACTOR Brooks Construction Co., Inc.

By

By Robert F. Brooks

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest

Attest Lynne Kane

Address for giving notices

Address for giving notices

(If OWNER is a public body attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.)

License No.

Agent for service of process:

BOARD OF PUBLIC WORKS

Thomas W. Latchem, Chairman

Roberta Anderson-Staten, Member

Betty R. Collins, Member

ATTEST:

Sandra E. Kennedy, Clerk

"NOTICE TO PROCEED"

To: Brooks Construction Co., Inc.

Date: September 14, 1981

1123 Barthold

Project: Broadway Streetscape Project

Fort Wayne, IN 46808

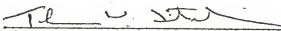
Resolution: 5922-1981

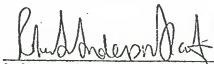
You are hereby notified to proceed in accordance with your contract dated
September 14, 1981 on the project and you are to complete the project
within 90 consecutive calendar days thereafter.

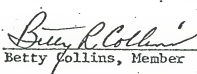
THEREFORE, the date for the completion of this project is December 12, 1981

OWNER:

BOARD OF PUBLIC WORKS


Thomas Latchem, Chairman


Roberta Anderson Staten, Member


Betty Collins, Member

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO

PROCEED is hereby acknowledged

by Robert L. Roth, Jr. Brooks Const Co Inc

this the 14 day of September

1981.

By: _____

Title: _____

DIGEST SHEET

J-51-09-19

TITLE OF ORDINANCE Broadway Streetscape ImprovementsDEPARTMENT REQUESTING ORDINANCE Community Development and Planning

SYNOPSIS OF ORDINANCE The following improvements will take place as part of the
Broadway Streetscape project: Division I, General Contractor Brooks Construction,
street, curb, sidewalk, drainage, screen walls, and paving construction - \$278,237.03.

Division II, Landscaping Contractor, T & F Construction, tree and shrub planting,
sodding, and maintenance - \$18,948.00. Division III, Electrical Contractor, T & F
Construction, traffic signal bases, and underground conduit - \$8,710.00.

PRIOR APPROVAL ACQUIRED AND ATTACHED.

EFFECT OF PASSAGE Implementation of Improvements

EFFECT OF NON-PASSAGE This project has prior approval.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$305,895.03

ASSIGNED TO COMMITTEE (PRESIDENT) Finance Committee, Vivian G. Schmidt